

**UNITED STATES OF AMERICA
EASTERN DISTRICT OF WISCONSIN**

STATE OF WISCONSIN LOCAL)
GOVERNMENT PROPERTY) Case No. 2:15-CV-00142-JPS
INSURANCE FUND,)
)
 Plaintiff,)
 v.)
)
 LEXINGTON INSURANCE)
 COMPANY, THE CINCINNATI)
 INSURANCE COMPANY, and)
 MILWAUKEE COUNTY,)
)
 Defendants.)

**CIVIL L.R. 7(h) EXPEDITED NON-DISPOSITIVE MOTION
FOR LEAVE TO SUPPLEMENT THE RECORD REGARDING LEXINGTON
INSURANCE COMPANY'S MOTION FOR SUMMARY JUDGMENT**

NOW COMES Plaintiff State of Wisconsin Local Government Property Insurance Fund (“the Fund”), and pursuant to Fed. R. Civ. P. 7(b) and Wis. E.D. Civ. L.R. 7(h) hereby moves the Court to grant this expedited non-dispositive motion for leave to supplement the record and file supplemental papers (memorandum and additional undisputed facts) in connection with Lexington Insurance Company’s (“Lexington”) motion for summary judgment (Docket #102). This request is made in light the issues raised by Lexington in its motion seeking dismissal of the Fund’s bad faith claim, and the very recent depositions of Lexington witnesses Ossian Cooney and Ed Frank.

ARGUMENT

Lexington filed its summary judgment motion on June 15, 2017, requesting dismissal of the Fund’s bad faith claim. On July 10, 2017, counsel for the Fund (Attorney Barbara A. O’Brien)

informed counsel for Lexington (Attorney Cheryl Mondi) that the Fund wished to take the deposition of Ed Frank, the Senior Director of Severity and principal adjuster on the claim for Lexington, and Ossian Cooney, the property unit manager for Lexington involved in the Fund's insurance claim. In early September 2017, counsel for Lexington (Attorney Jefferson Patton) responded to the Fund's request, suggesting depositions on September 13 and 14, 2017. Mr. Cooney was deposed September 13, 2017; Mr. Frank was deposed September 14, 2017.

Both Cooney and Frank gave testimony the Fund believes is material to the bad faith claim and Lexington's pending motion seeking summary judgment on the bad faith claim. While it is true that the Fund has filed its brief in opposition to Lexington's motion (Docket #126), that was before the foregoing witnesses' testimony was taken. This Court previously granted Lexington's motion for additional time to respond to the Fund's summary judgment motion, given their need to depose other witnesses (e.g., Fund Manager Brynn Bruijn-Hansen). (See text only Order 07/31/2017.) Furthermore, the Fund did not oppose Lexington's recently filed Rule 7(h) expedited non-dispositive motion (docket # 144) for leave to file a response in opposition to the Fund's motion for declaratory judgment and summary judgment. Allowing the Fund to supplement the record is fair and efficient in light of this record. At the very least, the testimony of Cooney and Frank would qualify as newly discovered evidence. Since the Court has yet to rule on Lexington's motion, it makes sense to consider evidence material to the motion and bad faith claim, particularly where the Fund had requested the witnesses' depositions shortly following Lexington filing its motion.

This motion is not brought to delay the proceedings, but to allow the Fund a full and fair opportunity to present evidence supporting its bad faith claim in this case.

WHEREFORE, Plaintiff requests that this Honorable Court enter an order granting permission to the Fund to file a supplemental memorandum, with supporting papers limited to the Cooney and Frank testimony evidence material to Lexington's pending summary judgment motion, said papers to be filed no later than seven days following the date of receipt of both deposition transcripts.

Respectfully submitted on this 18th day of September, 2017.

s/ Patryk Silver

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